

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:22-CV-847-LCB-JCW

JOHN D. SULLIVAN)
)
Plaintiff,)
)
v.)
)
THE UNIVERSITY OF NORTH)
CAROLINA HEALTH CARE)
SYSTEM,)
)
Defendant.)

**PLAINTIFF'S NEW BRIEF IN SUPPORT OF PLAINTIFF'S MOTION
TO EXTEND TIME TO RESPOND TO DEFENDANT'S SECOND
MOTION FOR A PROTECTIVE ORDER (DE53)**

COMES NOW the Plaintiff pursuant to Fed. R. Civ. P. 6(b)(1)(b) and
Local Rule 26.1(d) and files this brief in support of Plaintiff's Motion to Extend
Time.

STATEMENT OF THE FACTS RELEVANT TO THIS MOTION

Defendant served its second motion for a protective order on Tuesday,
August 6. However, beginning July 30, 2024, the undersigned attended her 88-
year-old aunt in the Emergency Room and then after admission, in the hospital.
After discharge from the hospital, the undersigned then stayed with her aunt at
her aunt's home until returning to her own home on August 7. While the

undersigned attempted to monitor her email and deadlines, most of her time was spent attending to her aunt and her medical concerns.

The undersigned was not in touch with her law partners during this time to request assistance in filing the brief responding to Defendant's second motion for a protective order because the undersigned did not see the filed motion. Moreover, the undersigned's law partners had no way of knowing that the undersigned did not see the motion.

During this same time period, both the undersigned and her aunt came down with COVID which also further hampered the undersigned's ability to attend to work. Plaintiff consulted with opposing counsel regarding opposing counsel's position as to this motion. Defendant's counsel responded asking the length of the extension of time requested, and Plaintiff's counsel replied one week. Defendant's counsel provided no additional response.

ARGUMENT

"Whether neglect is 'excusable' has been described by the Supreme Court as at bottom an equitable [inquiry], taking account of all relevant circumstances,' including the following: (1) the danger of prejudice to the non-movant; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was in the reasonable control of the movant; and (4) whether the movant acted in good

faith.” *Wiles v. Black*, No. 1:21CV84, 2022 U.S. Dist. LEXIS 207507, at *3 (M.D.N.C. Aug. 4, 2022) (quoting *Fernandes v. Crain*, 538 F. App'x 274, 276 (4th Cir. 2013) (citing *Pioneer Inv. Serer. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993))).

In this case, the undersigned’s personal and familial health matters were outside of the control of Plaintiff and Plaintiff’s counsel, and the undersigned’s law partners had no way of knowing that the undersigned had not seen the second motion for a protective order. In addition, there is minimal danger of prejudice to Defendant and the potential impact on the proceedings is also minimal when compared to the need for justice in this case to be done and ample discovery to be conducted. Finally, this motion is not filed for the purpose of delay and movant requests this extension in good faith.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff’s minimally late motion for an extension of time to file a response to Defendant’s second motion for a protective order based on excusable neglect.

Respectfully submitted, this 2d day of September 2024.

/s/ VALERIE L. BATEMAN

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CERTIFICATE OF FILING AND SERVICE

This is to certify that the undersigned has this day electronically filed or caused to be filed the foregoing **BRIEF IN SUPPPORT OF PLAINTIFF’S MOTION TO EXTEND TIME TO FILE RESPONSE TO DEFENDANT’S SECOND MOTION FOR A PROTECTIVE ORDER** with the Clerk of Court using the CM/ECF system which will send notification of the filing of the document to all counsel of record.

This 2nd day of September 2024.

/s/ VALERIE L. BATEMAN

Valerie L. Bateman

NEW SOUTH LAW FIRM